

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TOKIO MARINE AMERICA)	
INSURANCE COMPANY,)	
as subrogee of Sesaco)	
Corporation,)	
)	
Plaintiff,)	
)	
-vs-)	Civil Action
)	No.:
PROMISE LAND FARMS,)	1:15-cv-00760-SS
)	
Defendant and Third)	
Party Plaintiff,)	
)	
-vs-)	
)	
SESACO CORPORATION,)	
)	
Third Party Defendant.)	

DEPOSITION OF CAROL L. JONES, Ph.D., P.E.
TAKEN BY TELEPHONE ON BEHALF OF THE DEFENDANT
AND THIRD PARTY PLAINTIFF PROMISE LAND FARMS
IN OKLAHOMA CITY, OKLAHOMA
ON FEBRUARY 16, 2017

REPORTED BY: SUSAN NARVAEZ, CSR
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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, that the deposition of CAROL L. JONES, Ph.D., P.E., may be taken on behalf of the Defendant and Third Party Plaintiff on February 16, 2017, in Oklahoma City, Oklahoma, by Susan Narvaez, Certified Shorthand Reporter for the State of Oklahoma, pursuant to the Federal Rules of Civil Procedure, by notice.

* * * * *

1 CAROL L. JONES, PH.D., P.E.
2 of lawful age, being first duly sworn, deposes
3 and says in reply to the questions propounded
4 as follows:

5 * * * * *

6 EXAMINATION

7 BY MR. HOWARD:

8 Q. I think the witness was just sworn.

9 Dr. Jones, this is Brent Howard. And
10 you're going to need to speak up pretty loud so
11 everybody can hear you. Okay?

12 A. I'll do that. Good morning.

13 Q. Good. That's great. The way you just
14 did it was perfect.

15 A. I'll try to. Well, just remind me if
16 I don't.

17 Q. I'll chew you out if you do it wrong.
18 Okay?

19 A. Please do that. I've been chewed out
20 by the best.

21 Q. That's good. That's good. Let me
22 tell you before we really get going here, Katie
23 has probably told you, I don't take long
24 depositions, so I don't think this is going to
25 take too long. There's just a few things that

1 I want to cover with you.

2 I will ask you, Dr. Jones, do you plan
3 on testifying live at trial?

4 A. Yes.

5 Q. Okay. Good. That's what I figured.
6 So a lot of my cross examination will be done
7 at trial rather than today. And of course, we
8 have an agreement with your attorney that if
9 you can't come to trial, they'll take a trial
10 deposition and we'll get all that worked out.
11 But hopefully you'll be able to be there.
12 Okay?

13 A. Sounds good.

14 Q. Dr. Jones, have you reviewed anything
15 related to this file since you wrote your
16 report?

17 A. The last deposition from Norm Smith.

18 Q. David Smith.

19 A. David Smith?

20 MS. BURKHART: Nathan.

21 A. Nathan Smith. Sorry. Sorry. It's
22 one of the N people. Nathan Smith, yeah. Mr.
23 Smith, I reviewed his testimony.

24 Q. (By Mr. Howard) Okay. Anything else?

25 A. No. I went back and reviewed some of

1 the documents from earlier before my report,
2 and then of course I reread my report. But
3 nothing new other than Mr. Smith's testimony.

4 Q. All right. Have you ever been to the
5 Promise Land Farm's facility?

6 A. No, sir.

7 Q. Have you ever been to the Sesaco
8 facility in Hobart, Oklahoma?

9 A. Yes, sir.

10 Q. How many times?

11 A. Once.

12 Q. Was that for this case?

13 A. No, sir. Six years ago.

14 Q. What was that occasion? And I don't
15 need a lot of detail.

16 A. They had just installed a new auger
17 system to move sesame through their plant and
18 they wanted to show it to me. And so I went
19 down and met with a guy named Tom Speed. I
20 don't believe he's with Sesaco any longer. But
21 we walked through their plant as it was at that
22 time. And that's all we did.

23 Q. Gotcha. Do you have any business
24 relationship with Sesaco in the past or at this
25 time other than being an expert in this case

1 that I'm asking you about today?

2 A. No, sir.

3 Q. All right. Did you ever see the
4 sesame seed that was damaged in the fire in
5 this matter?

6 A. No, sir.

7 Q. Okay. I want to ask you about the
8 Hobart plant -- I'm sorry, the Sesaco plant in
9 Hobart. Does it have bins much like those at
10 Promise Land Farms?

11 A. I've not seen Promise Land Farm's bins
12 other than the layout, the overhead layout. So
13 I'm not sure.

14 Q. Okay. Do the bins at the Hobart
15 facility have aeration equipment?

16 A. I don't remember. They don't hold
17 sesame very long there.

18 Q. Okay. Why is it they don't hold
19 sesame very long there?

20 A. My understanding is they have these
21 receivers out in the areas where they grow it
22 and they hold the sesame there until they're
23 ready to process it or package it at Hobart.

24 Q. All right. And of course Promise Land
25 Farms at the time of this incident was one of

1 those receivers, correct?

2 A. All I know about that arrangement is
3 what's in the testimony that's been provided to
4 me.

5 Q. Okay. Have you ever seen the 2013
6 sesame receiver agreement?

7 A. Yes.

8 Q. And I think, according to that
9 agreement, PLF -- I don't think there's any
10 doubt, there's nobody disagreeing in this
11 matter -- that PLF was a receiver for Sesaco.
12 And that's your understanding as well?

13 A. I believe that was in that agreement.
14 I'm not a contract specialist, so I'm not going
15 to be able to answer very many questions about
16 the contract. But I believe in that contract
17 it said they were a receiver.

18 Q. That's fair enough. And I appreciate
19 that. Do you know how many -- well, let's go
20 back to the year 2013 when this receiver
21 agreement was entered into and PLF was handling
22 sesame for Sesaco. Do you know how many such
23 receivers as PLF Sesaco had in 2013?

24 A. No, sir.

25 Q. Do you have a ballpark figure?

1 A. No, sir. The only --

2 Q. Do you know if PLF was the only one?

3 A. I have no idea.

4 Q. Do you know how many receivers Sesaco
5 has now?

6 A. No, sir.

7 Q. And I'm talking about in the United
8 States. Okay?

9 A. I have no idea.

10 Q. Okay. So if I were to ask you about
11 every year going back 30 years, your answer
12 would still be "I don't know how many receivers
13 they had." Am I correct about that?

14 A. That's correct.

15 Q. That's fair enough. Let's assume that
16 Sesaco did use other receivers other than PLF
17 in 2013. If they did, do you know if those
18 other receivers had aeration equipment on their
19 bins?

20 A. I would not know.

21 Q. That's fair enough. Can you describe
22 Sesaco for me, ma'am? Tell me what you know
23 about Sesaco as it relates to sesame seed.

24 A. They have developed genetic stock
25 where we can grow sesame in the United States.

1 I believe that they also import and export
2 sesame seed to the United States and outside
3 the United States. That's my knowledge of what
4 they do with sesame. But I think they're the
5 only ones in the United States that develop
6 genetic stock for sesame to be grown in the
7 United States.

8 Q. Okay. So I think that answers my
9 question. As far as sesame in the United
10 States is concerned, is it your understanding
11 that Sesaco is either the only player in the
12 field or, if not the only one, certainly the
13 largest?

14 MS. BURKHART: Object to the form.

15 A. I don't know about the size. There
16 are other people who import sesame to the
17 United States to be sold to restaurants and
18 food manufacturers, but I have no details about
19 their size and how they compare to Sesaco.

20 Q. (By Mr. Howard) Let's take out
21 imported sesame from other countries. As far
22 as sesame that is grown and harvested in the
23 United States, isn't it true that Sesaco is
24 either the only such company that does that or,
25 if not the only one, certainly the largest?

1 A. They're the only one I know of.

2 MS. BURKHART: Object to form.

3 Q. (By Mr. Howard) So certainly in 2013
4 Sesaco would have had a lot of expertise in the
5 harvesting, storing, et cetera, with sesame.
6 Do you agree with that?

7 MS. BURKHART: Object to the form.

8 A. That would be my assumption, yes.

9 Q. (By Mr. Howard) Okay. Tell the jury,
10 if you would -- and when I say that, I say
11 that, Dr. Jones, because this may be read to
12 the jury. Tell the jury why moisture matters
13 with sesame.

14 A. Moisture matters with sesame just like
15 it does with all biological products. The
16 higher the moisture the more opportunities
17 microbial action can begin to develop.
18 Microbial action would be in the case of mold,
19 insect excrement, insect activity, spoilage.
20 It plays a part in the development of rancidity
21 in oil seeds. And sesame is no different than
22 other oil seeds. And in fact, other than the
23 oil content, that same microbial action can
24 happen in any product, including corn, wheat,
25 soybeans, barley, oats, any of the cereal

1 grains as well.

2 Q. Sesaco's literature indicates that
3 moisture is especially important with sesame.
4 Do you agree with that?

5 A. It's important in all of these
6 products. I don't know that sesame is any -- I
7 wouldn't say that it's any more important with
8 sesame. It's important in all biological
9 products.

10 Q. Okay. Do you agree that harvesting
11 sesame at below 6% moisture is critical?

12 MS. BURKHART: Object to the form.

13 A. I think below 7% is critical.

14 Q. (By Mr. Howard) Do you know why
15 Sesaco's literature says 6%?

16 A. I don't know why.

17 Q. Okay. But you would disagree with
18 that 6% figure?

19 A. 6% is certainly safe, but so is 7%.

20 Q. Okay. Why is the moisture content of
21 sesame important when it comes to storing
22 sesame in bins?

23 A. Well, just like with any other
24 biological product -- when I say biological
25 product, I'm talking grain in this case, grain

1 and oil seeds, and sesame would be included in
2 that statement. When the moisture content is
3 increased or is higher, then temperature really
4 becomes an important consideration. The
5 temperature needs to be lower as the moisture
6 content goes higher so that we can discourage
7 microbial activity from developing in the bin.

8 Q. How is moist important when it comes
9 to fire in a bin that's filled with sesame?

10 A. Moisture content establishes an
11 environment for microbial activity to be
12 established. And that microbial activity can
13 increase the temperature to the point,
14 especially in this case, of combustion, self
15 combustion.

16 Q. All right.

17 A. That was covered in my report.

18 Q. And certainly Sesaco knew that before
19 they entered into the receiver agreement with
20 Promise Land Farms, correct?

21 MS. BURKHART: Object to form.

22 A. I'm sure they probably did. That's
23 common knowledge in the grain handling
24 industry.

25 Q. (By Mr. Howard) If they didn't know

1 that, they certainly should have known it,
2 shouldn't they?

3 MS. BURKHART: Object to form.

4 MR. McRORY: Object to the form.

5 A. I have no idea of what they should and
6 shouldn't know.

7 Q. (By Mr. Howard) Okay. Let me ask that
8 again.

9 MR. HOWARD: And Rick, I'll give you
10 time to make your objection so we're not
11 talking over each other.

12 Q. (By Mr. Howard) If Sesaco did not know
13 that moist sesame could internally combust
14 before they entered into the receiver agreement
15 of 2013 with Promise Land Farms, they certainly
16 should have known that, is that correct?

17 MS. BURKHART: Object to the form.

18 MR. McRORY: Objection, form.

19 A. I have no --

20 Q. (By Mr. Howard) You may answer, Dr.
21 Jones.

22 A. Excuse me?

23 Q. I said you may answer.

24 A. Okay. I don't know what they should
25 and shouldn't have known. That is a common

1 knowledge in the grain industry. It's common
2 knowledge in the hay handling industry as well.

3 Q. Okay. The seed that was in Bin 30 --
4 and it's your understanding we're talking about
5 Bin 30, correct?

6 A. Correct.

7 Q. All right. And when I talk about the
8 sesame seed that was burned or destroyed or
9 whatever, I'm talking about Bin 30, so we're
10 talking about the same thing. Okay, Dr. Jones?

11 A. Sounds good.

12 Q. The seed that was deposited in Bin 30
13 at Promise Land Farms is what is referred to as
14 out-of-condition seed, is that correct?

15 A. That's my understanding.

16 Q. And I don't think there's any dispute
17 about that. Tell the jury, if you would, what
18 your understanding of what out-of-condition
19 seed is.

20 A. With respect to sesame, it has extra
21 add mixture which is foreign material. It
22 could be other kinds of seeds. It could be
23 chaff, grass seeds. They did not say in any of
24 the testimony that I recall what that add
25 mixture was. But it had add mixture in it.

1 The moisture content was a little bit
2 higher. I believe it was at 9%. They were
3 allowing 9% moisture content, which is of no
4 concern other than as moisture content
5 increases more diligence needs to be in place
6 to maintain that product in storage.

7 Q. Let me stop you there. Did Sesaco let
8 Promise Land Farms know that because they were
9 accepting moisture content sesame up to 9% that
10 that needed to be more diligently observed?

11 MS. BURKHART: Object to form.

12 A. I don't recall seeing that in any of
13 the literature or any of the documents, but
14 that's certainly something anyone who handles
15 grains, has had any experience with grain,
16 already knows. That's common industry
17 knowledge.

18 Q. (By Mr. Howard) Okay. And of course,
19 Sesaco would have known that, correct?

20 A. I have no idea what they knew and
21 didn't know.

22 Q. Okay. All right. Did you complete
23 your definition as to what you believe
24 out-of-condition sesame is?

25 A. Yes, sir. I might add to that,

1 sometimes when we call sesame out of condition,
2 the acid values can be a little higher than
3 perfect in-condition sesame. So I think that
4 would be the only other thing I would add to
5 that explanation.

6 Q. Okay. That's good. I wanted to let
7 you give a complete explanation.

8 A. Thank you.

9 Q. Okay. Did Sesaco know prior to
10 entering into the receiver agreement with
11 Promise Land Farms that high moisture sesame
12 can heat up in trucks and silos and become
13 worthless?

14 MS. BURKHART: Object to the form.

15 A. I have no idea what they knew.

16 Q. (By Mr. Howard) If their literature
17 states that, would you assume that they knew
18 that?

19 MS. BURKHART: Object to form.

20 A. That I would be an assumption. And I
21 don't know what they know and don't know.

22 Q. (By Mr. Howard) Okay. Do you have any
23 idea what expertise anybody with Sesaco had as
24 far as storing grain at a reserving facility?

25 A. No, sir.

1 Q. Okay. Why was it important for Sesaco
2 to have Promise Land Farms segregate
3 out-of-condition sesame from good sesame?

4 A. I don't know what their reasoning was,
5 but generally when -- in the industry when we
6 segregate grain it's due to marketing
7 considerations. They may have had a customer
8 that required characteristics that would not be
9 met by that out-of-condition or the Bin 30
10 grain.

11 Q. Okay. Did it have anything to do with
12 fire safety or the possibility of ruining the
13 sesame?

14 A. Not that I know of.

15 Q. Okay. Is it your understanding from
16 what you've reviewed that it had been the
17 intention of Sesaco to remove the
18 out-of-condition sesame from Bin 30 quicker
19 than they did?

20 MS. BURKHART: Object to the form.

21 A. I'm not a contract expert, so I'm not
22 real sure what was in the contract or what was
23 conveyed between the two parties about when to
24 remove the grain.

25 Q. (By Mr. Howard) Okay. And I'm not

1 talking about the contract. I'm primarily
2 talking about what Mr. Fullington would have
3 discussed with Promise Land Farms folks about
4 removing sesame from Bin 30 quickly. Do you
5 recall any of that?

6 A. No, sir.

7 Q. Okay. Do you have -- assume with me
8 that it was Mr. Fullington's intention to
9 remove the sesame from Bin 30 within a matter
10 of weeks rather than months. Do you have any
11 idea why he did not do that?

12 MR. MCRORY: Objection, form.

13 A. I don't know why he didn't do that.
14 My assumption would be that he didn't have a
15 market for it, but I don't have any
16 documentation that says that.

17 Q. (By Mr. Howard) But to be fair to you,
18 you don't know one way or another really?

19 A. Exactly.

20 Q. We know that Mr. Fullington went out
21 in April and inspected several bins, including
22 Bin 30. I want you to assume with me that
23 after that April inspection, it was again Mr.
24 Fullington's intention to promptly remove the
25 sesame from Bin 30. Do you know why that was

1 not done?

2 MS. BURKHART: Object to form.

3 A. I do not know.

4 MR. MCRORY: Object to the form.

5 Q. (By Mr. Howard) Okay. That's fair
6 enough. In your review of the documents, Dr.
7 Jones, I'm sure you've seen that most of the
8 witnesses discussed an initial receipt of
9 sesame when testing was done and then weekly
10 inspections that were to have been performed
11 after that sesame was accepted and placed in
12 bins. Do you recall that testimony?

13 A. I recall that there were receipts as
14 they received the sesame. And that's typical
15 of any grains -- grain receiver. I saw that
16 they were supposed to do the weekly
17 inspections, but I didn't see any documentation
18 where those inspections were carried out or I
19 never saw any procedures of -- any
20 documentation of the procedures they were
21 following in their inspections.

22 Q. Okay. I want to talk to you just a
23 second about the initial receipt of sesame.
24 Okay?

25 A. Okay.

1 Q. So we'll both know what we're talking
2 about.

3 A. Thank you.

4 Q. Okay?

5 A. Yes.

6 Q. Okay. To my knowledge, no witness in
7 this litigation has stated that they have a
8 complaint about the way that Promise Land Farms
9 performed that initial receipt of sesame. Do
10 you agree with that?

11 A. Yes, sir.

12 Q. Do you have any complaint about the
13 way Promise Land Farms performed the initial
14 receipt of sesame?

15 A. No, sir.

16 Q. Okay. That's going to save a lot of
17 time. So we know what we're talking about.

18 A. Okay.

19 Q. I assume that you agree, as Nathan
20 Smith agreed with me, that the issue in this
21 litigation involves the weekly inspections. Is
22 that a fair statement?

23 A. Yes, sir.

24 Q. And I think you kind of just
25 summarized what your complaint is. Is that

1 right?

2 A. Well, I don't know what to complain
3 about because there was no documentation
4 telling me how those inspections were done.
5 So, yes, that is a major concern.

6 Q. Okay. Would it be fair to say that,
7 as we sit here today and I ask you these
8 questions, you don't know what weekly
9 inspections were performed by Promise Land
10 Farms or if they were performed or in what
11 manner they were performed?

12 MS. BURKHART: Object to form.

13 A. We have testimony that is conflicting
14 in what inspections were carried through. So,
15 no, I'm not sure what they did.

16 Q. (By Mr. Howard) Okay. And I just want
17 to make sure that's clear on the record. As we
18 sit here today, you can't tell the jury what
19 weekly inspections were performed by Promise
20 Land Farms?

21 A. That's correct. There's no
22 documentation.

23 Q. Okay. Do you agree with Mr. Smith
24 when he testified that the only evidence he has
25 that weekly inspections weren't performed

1 properly is the fire itself?

2 A. I don't agree with that.

3 Q. Tell me why you disagree with that.

4 A. We don't have any documentation that
5 they were performed other than the testimony --
6 I think there's two or three individuals that
7 gave testimony. None of that testimony
8 indicated a proper inspection process.

9 Q. Okay. What did Mr. Fullington say he
10 thought the proper inspection process was for
11 the weekly inspections?

12 A. Could you repeat that, please?

13 Q. Yes, ma'am. What procedure did Mr.
14 Brad Fullington describe as the proper
15 procedure for PLF to perform the weekly
16 inspections?

17 A. I don't know what his understanding of
18 the proper procedure was, but I believe what
19 he, in his testimony -- and I don't have that
20 in front of me, so, you know, this is going to
21 be my memory of that.

22 Q. Sure.

23 A. He would open the bin, look in with a
24 flashlight, and that was the whole summation of
25 his inspection process.

1 Q. All right. If Mr. Fullington was the
2 person that was PLF's contact on how to perform
3 weekly inspections, do you have an opinion as
4 to whether or not Mr. Fullington properly and
5 adequately instructed Promise Land Farms'
6 employees and representatives?

7 MS. BURKHART: Object to form.

8 MR. McRORY: Objection, form.

9 A. Could you ask that again, please? I
10 don't understand that question.

11 Q. (By Mr. Howard) Okay. I want you to
12 assume with me, which I think is true, that
13 Promise Land Farms' contact was Brad
14 Fullington. And I want you to assume that Mr.
15 Fullington is the person that would have
16 instructed or graded the papers of Promise Land
17 Farms on how to conduct weekly inspections. If
18 what you just described is how Mr. Fullington
19 instructed Promise Land Farms to perform weekly
20 inspections, is it your opinion that Mr.
21 Fullington improperly instructed Promise Land
22 Farms?

23 MS. BURKHART: Object to form.

24 MR. McRORY: Objection, form.

25 A. I don't remember any documentation

1 saying that Mr. Fullington instructed Promise
2 Land how to perform inspections. Promise Land
3 has experience in handling grain. That's
4 common industry knowledge on how to inspect a
5 grain bin and the product inside of it. So I
6 would -- if we're going to assume things here,
7 I would assume that Promise Land knew how to
8 inspect a grain bin without instruction.
9 That's common industry knowledge.

10 MR. HOWARD: Okay. I'll object to
11 that last part as nonresponsive.

12 Q. (By Mr. Howard) If you don't know what
13 weekly inspections were performed by Promise
14 Land Farms, how can you tell the jury what you
15 think Promise Land Farms did wrong in those
16 weekly inspections, other than not documenting
17 the inspections?

18 MS. BURKHART: Object to form.

19 MR. MCRORY: Objection, form.

20 A. They did not -- they did not
21 apparently notice that the crop was going out
22 of condition to the point of self combustion.
23 That's not a process that happens quickly. It
24 would take, I would estimate, at least six
25 weeks. The rancidity of that seed would have

1 been noticed by odor long before we saw any
2 indication of a fire. So apparently they
3 didn't notice those things because they didn't
4 tell Sesaco of the problem.

5 Q. (By Mr. Howard) Okay. Anything else?

6 A. The problem with Bin 30 didn't happen
7 over night. It would have taken longer than a
8 week. So if they were doing inspection, they
9 did not report the problems that were inherent
10 in that bin at that time.

11 Q. Okay. Assume with me again that Mr.
12 Fullington's intention was to remove the sesame
13 from Bin 30 within two weeks to a month. We
14 know that had he done that there wouldn't have
15 been a fire, is that correct?

16 MS. BURKHART: Object to form.

17 MR. McRORY: Objection, form.

18 A. I don't really know how to answer
19 that. If I were to leave this building right
20 now and it's not on fire I wouldn't burn up
21 either. So, you know, if we're assuming
22 things, if they had taken it out the day that
23 he was there, there was no fire, so the crop
24 would not have burnt.

25 MR. HOWARD: Okay. And I'll object to

1 that as nonresponsive.

2 Q. (By Mr. Howard) We know when Mr.
3 Fullington came out in April, it was his
4 intention to remove the sesame from Bin 30
5 within a couple of weeks. We know that had he
6 done that as he intended, there would have been
7 no fire, is that correct?

8 MS. BURKHART: Object to form.

9 MR. MCRORY: Objection to form.

10 A. I don't know what his intentions were.

11 Q. (By Mr. Howard) Pardon me?

12 A. I don't know what his intentions were.
13 Had he --

14 Q. I apologize. That was not my
15 question.

16 A. Okay.

17 Q. I want you to assume that it was his
18 intention to remove the sesame within a couple
19 of weeks or so. Is it true that had he done
20 that, there would have been no fire?

21 MR. MCRORY: Objection, form.

22 A. I don't know within two weeks whether
23 there would be a fire or not. There would not
24 have been a fire the day he was there.

25 Q. (By Mr. Howard) Okay. Do you think

1 the process of the sesame ruining started
2 within two weeks of April when he performed his
3 inspection?

4 A. Not knowing what the condition with
5 all of the chemical constituents and all that
6 of that product was at that point, a simple
7 visual inspection that day would not have given
8 enough information to know whether the process
9 had already started that would culminate in the
10 fire.

11 Q. Do you know what inspection Mr.
12 Fullington performed in April?

13 A. I don't know all of the details of
14 that inspection, no.

15 Q. Do you know any of the details?

16 A. I know that he looked in the bin. He
17 checked whatever moisture content records that
18 were available. He looked at the records of
19 the acid levels, and they looked okay.

20 Q. Assume with me again that it was Mr.
21 Fullington's intention after that April
22 inspection to move the sesame quickly from Bin
23 30. With that assumption, do you have any
24 knowledge of why that was not done?

25 A. I have no knowledge of that.

1 MR. MCRORY: Objection, form.

2 Q. (By Mr. Howard) Tell me, if you would,
3 Dr. Jones -- you've already talked about the
4 weekly inspections, but you're certainly
5 welcome to go into a little bit more detail. I
6 want to know when we get to trial what the
7 complaints you're going to have with Promise
8 Land Farms that you believe caused or
9 contributed to the sesame in Bin 30 being
10 ruined.

11 A. We have no indication of the use of
12 their aeration system. And there's certainly
13 no written records of that. And that's an
14 industry standard to use aeration to maintain
15 the temperature and the grain quality within
16 the bin. In fact --

17 Q. Let me stop you there. We know that
18 Promise Land Farms and PLF's -- I'm sorry. We
19 know that Promise Land Farms and Sesaco's
20 agreement was controlled by the 2013 sesame
21 seed receiver agreement. And I'm not trying to
22 make a lawyer out of you, but we know that that
23 was the agreement between the two parties, is
24 that correct?

25 MS. BURKHART: Object to form.

1 A. They had an agreement, yes.

2 Q. (By Mr. Howard) Okay. Did anything in
3 that agreement or any other agreement between
4 Sesaco and Promise Land Farms call for the use
5 of an aeration system while sesame was being
6 stored at Promise Land Farms?

7 A. Sesaco inspected the facilities at
8 Promise Land. There was aeration on those
9 bins. The fans were sitting there and they saw
10 that there was aeration. That's a common
11 practice. And it's industry standard or best
12 management practice, whichever you want to call
13 it, that if those aeration fans are available,
14 that the owner of that bin and those aeration
15 fans would use those in the process of keeping
16 a product in condition.

17 MR. HOWARD: I will object to that as
18 nonresponsive. I don't think that was my
19 question. And I probably asked a bad question.

20 Q. (By Mr. Howard) Is there anything, to
21 your knowledge, in the 2013 sesame seed
22 receiver agreement that calls for the use of
23 aeration equipment or even for the receiver to
24 have aeration equipment?

25 A. I don't remember that being spelled

1 out in the contract. What is in the contract
2 that I remember, and please bear in mind I'm
3 not a contract expert here, but what I remember
4 reading in that contract is that Promise Land
5 was required to keep that product in as good a
6 condition as when they received it. It is
7 implied in the grain industry that with an oil
8 seed, that means using aeration to maintain the
9 temperature.

10 Q. Do you know if anybody at Sesaco ever
11 expressed that to Promise Land Farms?

12 A. I do not know.

13 Q. Okay. Do you have any idea if Sesaco
14 in 2013 required their receivers to have
15 aeration equipment on their bins?

16 A. I do not know.

17 Q. Okay. You talked about what PLF was
18 required to do. Does --

19 MS. BURKHART: Katie, do you have a
20 copy of that 2013 sesame seed receiver
21 agreement?

22 MS. BURKHART: No, I don't. I can
23 pull it up on my computer, if needed.

24 MR. HOWARD: I think it might be
25 better, instead of me just reading it to her.

1 If you want to pull that up real quick, I'm
2 just going to ask her about a couple of things
3 in there.

4 MS. BURKHART: Sure. Give me one
5 second and I'll let you know.

6 MR. HOWARD: Absolutely. And I should
7 have sent one. I didn't think about it.

8 Q. (By Mr. Howard) While she's doing
9 that, Dr. Jones, do you know if before the 2013
10 sesame seed receiver agreement was entered into
11 if aeration was ever discussed between Promise
12 Land Farms and Sesaco?

13 A. I do not know.

14 Q. Do you know if before that agreement
15 was entered into if Sesaco knew whether or not
16 Promise Land Farms had aeration equipment on
17 their bins?

18 A. I believe they inspected the facility
19 before they entered into the agreement, so they
20 would have seen the fans.

21 Q. Okay.

22 MS. BURKHART: All right. Brent, I
23 have it up on my computer.

24 MR. HOWARD: Okay. Good.

25 Q. (By Mr. Howard) If you would go down,

1 Dr. Jones, to Paragraph Number 3 on Page 1 of
2 that sesame seed receiver agreement. It is
3 headed Equipment. Do you see that?

4 A. I see that.

5 Q. The first sentence says, "Receiver,"
6 and that's Promise Land Farms, "shall have the
7 capability to store both good seed and handle
8 out-of-condition seed." Do you see that first
9 sentence?

10 A. I see that.

11 Q. Do you believe that at all times
12 relevant to this matter that Promise Land Farms
13 did indeed have the capability to store both
14 good seed and handle out-of-condition seed?

15 A. They had the equipment to do that.
16 There's more -- when you say capabilities, that
17 includes more than just equipment. They need
18 to have the knowledge to use that equipment.
19 And so that would be included in my answer.

20 MR. HOWARD: And I'll object to that
21 as nonresponsive.

22 Q. (By Mr. Howard) My question was not
23 what they did or didn't do wrong. It was
24 simply did they have the capability to store
25 both good seed and handle out-of-condition

1 seed?

2 A. I would agree with that.

3 MS. BURKHART: Object to form.

4 Q. (By Mr. Howard) Okay. The next
5 sentence says, "The out-of-condition seed,"
6 which we've already established is what we're
7 dealing with in Bin 30, "may be stored in a
8 separate tank, in bin bags, in a truck or a
9 suitable equivalent." Do you see that?

10 A. Yes, sir.

11 Q. What's a bin bag?

12 A. A bin bag is a tote bag made of -- oh,
13 it's a combination of plastic and fiber
14 material.

15 Q. That doesn't have aeration equipment,
16 does it?

17 A. They can have, yes.

18 Q. Okay. It says that the
19 out-of-condition seed could have been stored in
20 a truck. What kind of truck are they talking
21 about there?

22 A. I don't know.

23 Q. Does a truck have aeration equipment?

24 A. It can have, yes, sir.

25 Q. Okay. Describe a truck that has

1 aeration equipment.

2 A. Truck aeration equipment is a fan that
3 is hooked to a long tube that is placed at the
4 front or the back of the truck and the air
5 moves through the truck and exits the other
6 end, hooked to electricity. Used quite often
7 to dry products into cool products.

8 Q. Describe a bin bag that has aeration
9 equipment.

10 A. The same kind of aeration process is
11 used in a bin bag or a tote bag. It's a
12 portable aeration system that has a fan with a
13 nozzle, a big long nozzle, so to speak, on the
14 end of it. It looks like -- very much like the
15 same system that would be used in the truck.

16 Q. Okay. What was meant in this receiver
17 agreement by, quote, suitable equivalent?

18 MS. BURKHART: Object to form.

19 A. I don't know. I don't know.

20 Q. (By Mr. Howard) That's fair enough.
21 Pursuant to this agreement, Dr. Jones, could
22 Promise Land Farms have shipped out sesame seed
23 from any bin without the approval of Sesaco?

24 A. I don't know that.

25 Q. Okay. That's fair enough. To your

1 knowledge, Dr. Jones, did Promise Land Farms
2 ever ruin good sesame seed by adding it to
3 out-of-condition seed?

4 A. I don't know that either.

5 Q. You don't have an opinion one way or
6 another?

7 A. No.

8 Q. Do you have any evidence that Promise
9 Land Farms ever ruined good seed by adding
10 out-of-condition seed to it?

11 A. No, sir.

12 Q. Okay. Now, let's go down.

13 MR. HOWARD: Katie, if you don't mind,
14 if you would show Dr. Jones Paragraph 7 which
15 talks about care of seed.

16 MS. BURKHART: Sure. Give me one
17 second and I'll get there.

18 MR. HOWARD: Please. Thank you.

19 MS. BURKHART: All right. I have
20 Paragraph 7 in front of her.

21 THE WITNESS: I've got it.

22 MR. HOWARD: Thank you.

23 Q. (By Mr. Howard) Dr. Jones, we have
24 established with Mr. Smith, I believe, that,
25 other than insurance issues, the dispute in

1 this cause of action boils down to that
2 Paragraph 7. Do you agree with that?

3 A. Let me read the paragraph here for a
4 second.

5 Q. Please take all the time you need,
6 Doctor.

7 A. Thank you. Okay. Could you ask the
8 question again, please?

9 Q. Yes, ma'am. We have established, I
10 believe, with Nathan Smith that, other than
11 insurance issues, the dispute in this
12 litigation boils down to that Paragraph 7, Care
13 of Seed. Do you agree with that?

14 A. I agree with that.

15 Q. Okay. That first sentence says that
16 "Receiver shall protect the seed" -- and I'm
17 going to go through this kind of slowly with
18 you -- "from moisture." Do you have any
19 evidence that PLF did not protect sesame seed
20 at their facility from moisture?

21 A. Yes, sir, I think the fire is that
22 evidence.

23 Q. Okay. Anything else that's evidence?

24 A. No, sir.

25 Q. How much moisture was added to the

1 seed after it was deposited in Bin 30?

2 MS. BURKHART: Object to form.

3 A. That's something we can't quantify.

4 It was enough to cause bacterial growth or
5 microbial activity so that the grain went ahead
6 and spontaneously combusted. It could have
7 come from condensation and it could have come
8 from a leak in the bin.

9 Q. (By Mr. Howard) Okay. Do you have any
10 evidence that any additional moisture was added
11 to the seed in Bin 30 after it was initially
12 deposited in Bin 30?

13 A. When you say "added," do you mean
14 someone pouring --

15 Q. It getting in because of a leak,
16 because of rainfall, as opposed to just being
17 the moisture that was already in the
18 out-of-condition seed.

19 A. Excess moisture came from some place,
20 yes, in the bin. It could have been from
21 condensation.

22 Q. And that condensation would have been
23 from the moisture that was already on the seed
24 when it was first deposited, correct?

25 A. No.

1 MR. MCRORY: Objection to form.

2 A. It can come out of the air that enters
3 in through the bin through, oh, things like
4 their vent system, leaks, air leaks in the bin.
5 As temperature changes, if you have more than
6 15 degree temperature change, then condensation
7 can occur because the water comes out of the
8 air.

9 Q. (By Mr. Howard) We know, don't we, Dr.
10 Jones, that once sesame is deposited in a bin
11 such as was done at Bin 30, that sesame doesn't
12 get any better, is that correct?

13 A. That's correct.

14 Q. We know it either stays the same or
15 gets worse, correct?

16 A. Correct.

17 Q. And Sesaco knew that, correct?

18 MS. BURKHART: Object to form.

19 A. I don't know what Sesaco knew.

20 Q. (By Mr. Howard) Okay. That's fair
21 enough. Going back to this Paragraph 7, it
22 says, "Receiver shall protect the seed from
23 chemicals." Do you have any evidence that
24 Promise Land Farms did not protect the seed in
25 Bin 30 from chemicals?

1 A. No, sir.

2 Q. Do you have any evidence that Promise
3 Land Farms did not protect the seed in Bin 30
4 from fuels?

5 A. No, sir.

6 Q. Do you have any evidence that Promise
7 Land Farms did not protect the seed in Bin 30
8 from fertilizers?

9 A. No, sir.

10 Q. That they did not protect the seed in
11 Bin 30 from other grains?

12 A. I have no evidence of that.

13 Q. Any evidence that Promise Land Farms
14 did not protect the seed in Bin 30 from bird
15 excrement?

16 A. No evidence.

17 Q. Any evidence that Promise Land Farms
18 did not protect the seed in Bin 30 from
19 rodents?

20 A. No, sir.

21 Q. Any evidence that Promise Land Farms
22 did not protect the seed in Bin 30 from
23 insects?

24 A. No evidence.

25 Q. Further down in Paragraph 7 it says,

1 "If there are any storms, the storage facility
2 shall be inspected for water damage." Do you
3 have, first of all, any knowledge as to whether
4 the sesame seed in Bin 30 -- or let me start
5 over.

6 Do you have any evidence if the seed
7 in Bin 30 itself was ever exposed to any
8 storms?

9 MS. BURKHART: Object to form.

10 A. I have no evidence of a storm record.

11 Q. (By Mr. Howard) Okay. If Bin 30 was
12 exposed to storms, do you know one way or
13 another whether or not Bin 30 was inspected by
14 Promise Land Farms for water damage?

15 MS. BURKHART: Object to form.

16 A. I believe Mr. Boling testified that he
17 looked at the bin after a storm.

18 Q. (By Mr. Howard) Okay. Do you have any
19 opinion as to whether or not that inspection
20 performed by him was done properly or not?

21 A. There was no documentation and no
22 information on how he performed that
23 inspection. So no.

24 Q. Is that your way of saying you can't
25 say one way or another?

1 A. That's my way of saying that, yes,
2 sir.

3 Q. Okay. We have here also in Paragraph
4 7 that Promise Land Farms was to have conducted
5 weekly inspections. Tell the jury what in Dr.
6 Jones' mind "weekly inspections" means.

7 A. Okay. My opinion of that is -- comes
8 from best management practices in the grain
9 industry that are published by universities and
10 by industry representatives and different
11 companies, particularly aeration fan companies.
12 What that includes is opening the access points
13 of the bin. Many times that's the roof access
14 points. Actually smelling inside the bins.
15 That means you need to break the plane of that
16 access point. Looking in the bin with enough
17 light to see the entire top surface of that
18 grain bulk. Taking a moisture sample if
19 there's any reason for doubt as to whether you
20 can tell the quality of the grain from the
21 visual inspection.

22 You would need to determine the
23 temperature of the grain in the bin, either
24 through the use of temperature cables. I don't
25 believe these bins had temperature cables. I

1 never saw any mention of that. So in the
2 absence of a temperature cable -- of
3 temperature cable data, some kind of assessment
4 of the temperature needs to be made of the
5 grain bulk itself. That can be done with
6 handheld thermometers, thermistors. There's
7 several methods of doing that. You can even
8 test the exhaust at the fan level, the
9 temperature of that air coming out of the bin
10 and get somewhat of an idea of what the grain
11 temperature is within the bin.

12 But knowing the temperature of that
13 grain inside the bin on a weekly inspection is
14 critical. Those would be the things that would
15 be contained in a weekly inspection.

16 Q. Okay. Now, you've just told me what
17 Dr. Jones expects of a weekly inspection. As
18 you sit here today, do you have any idea what
19 Sesaco expected from a weekly inspection?

20 MS. BURKHART: Object to form.

21 A. I don't know what they expect.

22 Q. (By Mr. Howard) Okay. And I'm going
23 back to 2013 when this sesame receiver
24 agreement was in effect. I take it you don't
25 know what they inspected as far as weekly

1 inspections at that point either. Am I correct
2 about that?

3 MS. BURKHART: Object to form.

4 A. That's correct. It was not in the
5 documentation. In the grain industry, that's
6 kind of --

7 MR. HOWARD: I'm going to object to
8 this as nonresponsive. My question is very
9 simple. I'll ask it again.

10 Q. (By Mr. Howard) Is it true that in
11 2013 and 2014, during that time period of --
12 during that time period, you don't know what
13 Sesaco expected Promise Land Farms to perform
14 as far as weekly inspections of sesame, is that
15 correct?

16 MS. BURKHART: Object to form.

17 A. I do not know what they expected.
18 It's not in the documentation.

19 Q. (By Mr. Howard) Thank you. I want you
20 to assume with me this. That Sesaco believed
21 that a weekly inspection that they expected was
22 as follows. Okay? "It would be to look at the
23 seed itself from the top of the bin, put a
24 flashlight in, make sure there's - you know,
25 with a flashlight you can see bug movement on

1 top. You open up the bin. You can smell an
2 objectionable odor. And then also with a
3 flashlight you could see if water had gotten in
4 and there was sprouting of the sesame on top."
5 If that is what Sesaco expected of Promise Land
6 Farms, do you fault what Sesaco expected?

7 MS. BURKHART: Object to form.

8 MR. McRORY: Objection, form.

9 A. I believe they should -- the
10 temperature is an important consideration. And
11 that may have been able to be detected if
12 there's an excess temperature in the head space
13 as you were taking the odor assessment.

14 Q. (By Mr. Howard) Okay. If, again, what
15 I just read is what Sesaco expected of Promise
16 Land Farms, is that your only complaint with
17 Sesaco's expectation?

18 MR. McRORY: Object to form.

19 MS. BURKHART: Object to form.

20 A. Yes, sir.

21 Q. (By Mr. Howard) Pardon me?

22 A. Yes, sir.

23 Q. Okay. Do you have a complaint with
24 Promise Land Farms if they indeed followed what
25 Sesaco says they expected as far as weekly

1 inspections are concerned?

2 A. Had they followed --

3 MR. McRORY: Object to form.

4 A. Ask the question again, please.

5 Q. (By Mr. Howard) Yes, ma'am. Do you
6 have a complaint with Promise Land Farms in
7 this litigation if they followed what Sesaco
8 expected be performed as far as weekly
9 inspections are concerned?

10 MS. BURKHART: Object to form.

11 MR. McRORY: Objection, form.

12 A. In my opinion, they should have
13 documented those inspections.

14 Q. (By Mr. Howard) Okay. Anything else?

15 A. Well, I'm not sure that those
16 inspections were actually done in that manner
17 because they didn't detect the odor that would
18 have been -- that would have occurred well
19 before the fire. So I don't really know how to
20 answer your question. If they were following
21 Sesaco's instructions, they would have noticed
22 some problems well before the fire started.

23 MR. HOWARD: I'll object to that as
24 nonresponsive. My question was --

25 Q. (By Mr. Howard) We've already

1 established and I've already asked you
2 questions about what you think Promise Land
3 Farms did wrong as far as weekly inspections.
4 My question is different. My question is how
5 you fault Promise Land Farms if they indeed
6 performed inspections as Sesaco said they
7 should be performed?

8 MS. BURKHART: Object to form.

9 Q. (By Mr. Howard) And I think you've
10 told me the only thing you have that you
11 believe is that there should have been some
12 temperature gauges, is that correct?

13 MS. BURKHART: Object to form.

14 A. Correct.

15 MR. HOWARD: Let me -- I may be silent
16 here for just a second. I'm going to go
17 through my notes. Believe it or not, I'm
18 getting close to the end. Okay, Dr. Jones?

19 THE WITNESS: Okay. Take your time.

20 MR. HOWARD: I'm going to try not to
21 go back over anything I've already done.

22 THE WITNESS: Thank you.

23 MR. HOWARD: Rick and Katie, I assume
24 you two are not going to ask any questions?

25 MS. BURKHART: Correct.

1 MR. MCRORY: That's right.

2 MR. HOWARD: Okay. I was going to let
3 you go ahead if you were. Let me take just a
4 second and go through this. Is that okay with
5 everybody?

6 MS. BURKHART: Sure. That's fine.
7 We'll do a five -- do you want to do a quick
8 five-minute break?

9 MR. HOWARD: Sure. We'll just stay on
10 the line and we'll do that. Okay?

11 MS. BURKHART: Sounds good.

12 (Recess.)

13 Q. (By Mr. Howard) Dr. Jones, during the
14 time Promise Land Farms was storing sesame at
15 their facility, did Sesaco ever instruct
16 Promise Land Farms to use aeration equipment?

17 A. I don't know.

18 Q. If they did, that would tell us that
19 Sesaco certainly knew how to instruct Promise
20 Land Farms in the use of aeration equipment,
21 correct?

22 MS. BURKHART: Object to form.

23 A. I don't know that.

24 Q. (By Mr. Howard) Okay. Is it true that
25 while sesame was being stored at Promise Land

1 Farms on behalf of Sesaco, that Sesaco
2 controlled what bins the sesame went into,
3 especially the out-of-condition seed?

4 MS. BURKHART: Object to form.

5 MR. MCRORY: Objection, form.

6 A. I don't know that they had that
7 control.

8 Q. (By Mr. Howard) Did Sesaco have the
9 control over what sesame was actually accepted
10 from farmers?

11 A. They gave Promise Land direction in
12 that. Not being a contract expert, I don't
13 know what that implies, but they did give
14 direction to Promise Land on what to accept.

15 Q. Did Sesaco control when sesame was
16 moved from Promise Land Farms?

17 A. Again, that's a contract question that
18 I'm not an expert in. My interpretation of the
19 contract, though, bear in mind I'm not an
20 expert in that area, they would give Promise
21 Land the indication of when to move it.

22 Q. Okay.

23 MR. HOWARD: Katie, can you pull up
24 that Sesaco receiver agreement one more time?
25 And I think this will be my last two or three

1 questions.

2 MS. BURKHART: Sure. I have it in
3 front of her now.

4 A. Okay.

5 Q. (By Mr. Howard) Good. If you would go
6 to Paragraph 15, Inspection of Records.

7 A. Okay. Hang on just a second here.

8 Q. Yes, ma'am.

9 A. I have it.

10 Q. Okay. And if you would like to read
11 that paragraph, I'm just going to ask you a
12 question or two about it.

13 A. Okay. Wait just a second here.

14 Q. Sure.

15 A. Okay.

16 Q. Okay. Pursuant to that paragraph, it
17 says that "Sesaco has the right but not the
18 obligation" -- and then I'll go down a little
19 bit -- "to inspect the equipment to determine
20 the quantities stored, the storage conditions
21 and the quality control procedures." Do you
22 see that?

23 A. Yes, sir.

24 Q. We know that in fact Sesaco exercised
25 that right, isn't that correct?

1 MS. BURKHART: Object to form.

2 A. I believe they inspected in April,
3 yes.

4 Q. (By Mr. Howard) Okay. So that would
5 have been inspecting -- and they -- let me
6 start over. And they had that right in April
7 pursuant to that clause of the receiver
8 agreement, correct?

9 A. Correct.

10 MR. HOWARD: That's all I have, Dr.
11 Jones. I appreciate it very much.

12 THE WITNESS: Okay. Thank you.

13 MR. HOWARD: I will pass the witness.

14 MR. McRORY: I'll reserve mine.

15 MR. HOWARD: Katie, I assume you're
16 reserving as well.

17 MS. BURKHART: Yes.

18 MR. HOWARD: Okay. We're done. But
19 Rick and Katie, can I visit with you one
20 second?

21 MS. BURKHART: Sure.

22 MR. HOWARD: Thank you, Dr. Jones.

23 THE WITNESS: Thank you. It's been a
24 pleasure.

25 (Discussion off the record.)

1 MR. HOWARD: I just would like a
2 condensed electronic version is fine for me.

3 MR. McRORY: I don't need a copy.
4 Thank you.

5 THE REPORTER: And how about the
6 witness' signature? Read and sign?

7 MS. BURKHART: Yes.

8 (Deposition concluded.)

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J U R A T

STATE OF _____)
COUNTY OF _____) SS:

I, CAROL L. JONES, Ph.D., P.E., do
hereby state under oath that I have read the
above and foregoing deposition in its entirety
and that the same is a full, true and correct
transcription of my testimony so given at said
time and place, except for the corrections
noted.

CAROL L. JONES, Ph.D., P.E.

Subscribed and sworn to before me, a
Notary Public in and for the State of Oklahoma
by said witness, CAROL L. JONES, Ph.D., P.E.,
on the _____ day of _____, 2017.

Notary Public in and for the
State of Oklahoma

My Commission Expires: _____

My Commission Number: _____

DODSON COURT REPORTING & LEGAL VIDEO
425 NW 7TH STREET
OKLAHOMA CITY, OK 73102

NAME: CAROL L. JONES, PH.D., P.E.
CASE: TOKIO v PROMISE LAND FARMS
DATE: FEBRUARY 16, 2017
REPORTER: SUSAN NARVAEZ, CSR

PG/LN	CORRECTION	REASON FOR CORRECTION
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[illegible]

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C E R T I F I C A T E

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

I, Susan Narvaez, a certified shorthand reporter within and for the State of Oklahoma, certify that CAROL L. JONES, Ph.D., P.E., was sworn to testify the truth; that the deposition was taken by me in stenotype and thereafter transcribed by computer and is a true and correct transcript of the testimony of the witness; that the deposition was taken on February 16, 2017, at 425 NW 7th Street, Oklahoma City, Oklahoma; that I am not an attorney for nor relative of either party, or otherwise interested in this action.

Witness my hand and seal of office on
the 21st day of February 2017.

SUSAN NARVAEZ, CSR
for the State of Oklahoma
CSR #00404